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Attorney for Plaintiffs
Dennis Hart and Ron Miller

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DENNIS HART AND RON MILLER,) Case No.: C 07-05845 MMC
Plaintiffs,)
v.) **UPDATED JOINT CASE MANAGEMENT
STATEMENT AND PROPOSED ORDER**
CITY OF ALAMEDA,) Date: July 18, 2008
Defendant.) Time: 10: 30 a.m.
) Dept: Courtroom 7, 19th Floor
) The Hon. Maxine M. Chesney

UPDATED JOINT CASE MANAGEMENT STATEMENT AND PROPOSED ORDER

1 The parties to the above-entitled action jointly submit this updated Joint Case
2 Management Statement and Proposed Order and request the Court to adopt it as its Case
3 Management Order in this case.

4 Following the Case Management Conference held on March 7, 2008, the parties
5 participated in a mediation session held on May 21, 2008 with Robert Edwards as mediator.
6 Following the mediation session, the parties continued settlement discussions through Mr.
7 Edwards. Unfortunately, the parties thus far have been unable to resolve their differences. As a
8 result, the parties provide this Joint Case Management Statement and request adoption of its
9 Case Management Plan in order to address the liability and damages issues presented by this Fair
Labor Standards Act case.

10 1. Statement of the Case

11 a. Plaintiffs' Statement of the Case:

12 The Plaintiffs and all consenting parties are or were members of the Alameda
13 Police Officers Association, which is the duly recognized employee organization
14 representing the non-exempt, rank-and-file employees of the City of Alameda's
15 Police Department. The terms and conditions of employment for the police
16 officers and sergeants represented by the Association are set forth in a binding
17 collective bargaining agreement, which includes an established forty (40) hour
18 work period with paid leave time counting as hours worked. Plaintiffs and all
19 consenting parties contend that the City has failed to properly calculate the
20 "regular rate" of pay for overtime compensation, as that term is defined by
21 Section 207(e) of the Fair Labor Standards Act, because the overtime rate fails to
22 include the following specialty and premium pays: bilingual pay, call back pay,
23 court time pay, field training officer pay, holiday-in-lieu pay, canine pay, and
stand-by pay.

24 b. Defendant's Statement of the Case

25 Defendant asserts that its pay practices are in compliance with the FLSA, and that
26 it is entitled to the exemption contained in 29 U.S.C. Sec. 207(k) based on an
established work period of 28 days.

1 2. Principal Legal Issues In Dispute: During mediation, it became clear to the parties that
 2 there are two primary legal issues that significantly impact liability and on which the
 3 secondary legal issues related to damages turn. Those issues are:

- 4 a. Whether, as a matter of law, the City is required to include the “holiday in lieu”
 5 pay provided for in the applicable collective bargaining agreements in the “regular
 6 rate” of pay for overtime compensation as that term is defined by Section 207(e)
 7 of the Fair Labor Standards Act.
 8 b. Whether, as a matter of law, the City is entitled to the exemption contained in 29
 9 U.S.C. Sec. 207(k) based on an established work period of 28 days.

10 3. Case Management Proposal:

- 11 a. Plaintiffs’ Case Management Proposal: Plaintiffs request that the Court set an
 12 expedited schedule for hearing cross-motions for summary judgment on the two
 13 legal issues set forth in Sections 2(a) and (b) above, i.e., whether “holiday in lieu”
 14 pay must be included in the “regular rate of pay for overtime purposes; and
 15 whether the City is entitled to the exemption contained in section 207(k).
 16 Plaintiffs request that these cross-motions for summary judgment be heard in
 17 December 2008, and that the scope of discovery be expressly limited to these two
 18 legal issues.
 19 b. Defendant’s Case Management Proposal: The City requests that the Court set a
 20 hearing on cross-motions for summary judgment only on the 207(k) legal issue
 21 referenced in Section 2(b) above, to be heard in December 2008, and that the
 22 scope of discovery be expressly limited to that legal issue.
 23 c. Joint Proposal: The parties jointly propose that a further case management
 24 conference be set for 90 days following the hearing on the cross-motions for
 25 summary judgment to determine what, if any, further scheduling is required.

26 4. Amendment of Pleadings: Plaintiffs request permission to amend the pleadings to include
 27 the non-sworn members of the Police Department who are also represented by the Alameda
 28 Police Officers Association.

Date: July 11, 2008

/ s /

Alison Berry Wilkinson
 Attorney for Plaintiffs

Date: July 11, 2008

/ 5 /

Ian P. Fellerman
Attorney for Defendant

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

In addition, the Court orders that:

1. Cross-Motions for Summary Judgment on the issue presented in Section 3, above, are hereby set to be heard on _____.
 2. A further case management conference is scheduled for _____, 2009, with an updated joint case management statement to be filed by the parties on or before _____, 2009.

Date: _____

MAXINE CHESNEY
United States District Court Judge

PROOF OF SERVICE

Case Name: *Dennis Hart and Ron Miller v. City of Alameda*
United States District Court for the Northern District of California
Case No.: C 07 5845 MMC

I, Maggie Bedig, am a citizen of the United States, and am over 18 years of age. I am employed in Contra Costa County and am not a party to the above-entitled action. My business address is Rains Lucia Stern, PC, 2300 Contra Costa Blvd., Suite 230, Pleasant Hill, California 94523. On the date set forth below I served a true and correct copy(ies) of the following document(s):

UPDATED JOINT CASE MANAGEMENT STATEMENT AND PROPOSED ORDER

upon all parties addressed as follows:

Teresa Highsmith, City Attorney
Donna Mooney, Senior Asst. City Attorney
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Email: dmooney@ci.alameda.ca.us

Joseph E. Wiley, Esq.
Ian P. Fellerman
Wiley Price & Radulovich
1301 Marina Village Parkway, Suite 310
Alameda, CA

said service was effected as indicated below:

- HAND DELIVERY- I placed true and correct copies of the above-referenced document(s) in a sealed envelope, addressed to the above-named parties, and personally delivered them.
- FACSIMILE TRANSMISSION- I caused true and correct copies of the above-referenced document(s) to be delivered by electronic facsimile transmission.
- MAIL – I placed true and correct copies of the above-referenced document(s) in a sealed envelope, properly addressed to the above-named parties, with postage prepaid in a receptacle regularly maintained by the United States Post Office.

VIA ELECTRONIC MAIL: I attached a true and correct copy thereof in PDF format to an electronic mail message transmitted to the electronic mail address indicated above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed on July 11, 2008 at Pleasant Hill, California.

Maggie Beddoe
Maggie Beddoe